



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE

Petitioner

and

TOWN OF CONWAY, POLICE DEPARTMENT:

Respondent

CASE NO. P-0757
A-0511:3

DECISION NO. 92-106

AFSCME, COUNCIL 93, LOCAL 3657

Complainant

v.

TOWN OF CONWAY

Respondent

APPEARANCES

Representing Teamsters Local 633:

Thomas D. Noonan, Business Agent

Representing AFSCME, Council 93:

James C. Anderson, Staff Representative

Representing Town of Conway:

Robert Tawney, Chief Negotiator

Also appearing:

William Scaletti, Conway Police Dept.
Robert Porter, Conway Police Commission
Jim Yeager, Conway Police Commission
David Bennett, Conway Police Dept.
John Roberts, Jr., Conway Police Dept.
Alan Brayce, Conway Police Dept.

BACKGROUND

On February 7, 1992, Teamsters Local 633 of New Hampshire filed a Petition for Certification for the following full-time and regular part-time employees of the Conway Police Department: captain (1), lieutenant (1), sergeants (4), police prosecutor (1), dispatch supervisor (1), animal control officer (1), and senior clerk (1). The Chief of Police (1) was specifically excluded. The Town filed a letter of exception to the Petition for Certification on February 13, 1992, objecting to inclusion of the captain, lieutenant, police prosecutor and animal control officer. On February 19, 1992, AFSCME, Council 93 filed a modification petition for sergeants, dispatch supervisor, prosecutor, clerks, and animal control officer/crossing guard, proposing that these positions be added to an existing unit (Case No. A-0511, Decision No. 85-05) of all full-time and part-time patrolmen, detectives, dispatchers and corporals for which it was certified as bargaining agent on October 7, 1985. Excluded from the "1985 Unit" were the positions of chief, lieutenant, sergeants and secretary/clerk typist. Given the overlap of petitioned-for positions, these matters were consolidated for hearing before the Board which occurred on May 14, 1992.

FINDINGS OF FACT

1. Evidence presented to this Board was insufficient to establish that the positions of Captain, Lieutenant, or Sergeants had changed to a degree to warrant their inclusion in a proposed or existing bargaining unit. The characteristics of their jobs remain supervisory in nature and warrant their exclusion under RSA 273-A:8 II relative to the "significant exercise of discretion" over subordinate employees.
2. Clerks perform an essential task relative to the operation of the police department. While they are not sworn officers, the clerical nature of their duties is not dissimilar to many of the functions of dispatchers who are already included in the 1985 AFSCME unit. These employees have the same working conditions as dispatchers, work in the police department building, and have a community of interest with dispatchers. With the exception of a clerk or secretary who performs duties relating to collective bargaining for the chief (and is, therefore, a confidential employee under RSA 273-A:1 IX), these employees are appropriate for inclusion in the AFSCME bargaining unit.

3. The job duties associated with the "Dispatch/Supervisor" referenced in the AFSCME Modification Petition do not rise to the level of a "significant exercise of discretion" over subordinate employees under RSA 273-A:8 such as to warrant exclusion. There is a shared community of interest with dispatchers; therefore, this position should be added to the AFSCME bargaining unit.
4. The duties of the "police prosecutor" are typical of those assigned to police personnel and, in the absence of the "prosecutor," would be performed by another police officer. The position has since been eliminated because the incumbent has been promoted to sergeant, an exempt position. Thus, we make no determination as to a hypothetical, unfilled position in the patrolmen's ranks.
5. The animal control officer contracts her services to the Conway Police Department, bills for those services, and is paid as an independent contractor.

ORDER

The Board directs as follows:

1. The Petition for Certification filed by Teamsters Local 633 of New Hampshire is DISMISSED given our finding about Captains, Lieutenants and Sergeants and the result that this would reduce the proposed unit to less than ten (10) employees under RSA 273-A:8 I.
2. Clerks (except the clerk or secretary working for the Chief of Police) are added to the unit represented by AFSCME, Council 93.
3. The clerk or secretary working for the Chief is excluded as "confidential" under RSA 273-A:1 IX (c).

4. The Dispatch/Supervisor position is added to the unit represented by AFSCME, Council 93.
5. The animal control officer is excluded because she is a contracting party and not a considered a "public employee" under RSA 273-A:1 IX.

So ordered.

Signed this 7th day of July, 1992.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard E. Molan, present and voting.